IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 28 of 1999
to
INCOME TAX APPLICATION No 50 of 1999
with
INCOME TAX APPLICATION No 57 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

THE COMMISSIONER OF INCOME-TAX
Versus
M/S. GNAN GANGA SCIENCE INSTI.

Appearance:
MR BB NAIK WITH MR MANISH R BHATT for Petitioner
MR KH KAJI for Respondents.

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE
Date of decision: 16/03/99

ORAL JUDGEMENT (Per J.N.Bhatt, J.)

In this group of 24 applications under section 256(2) of

the Income Tax Act , 1961, common questions are involved arising out of common order of the Income-tax Appellate Tribunal, Rajkot Bench dated 3.8.98, between common parties. They are being disposed of by this common judgment.

There was a search in the premises of the five educational institutions as well as residential premises of some of the partners, one of whom was Krishnakant G. Dholakia. The Assessing Officer held that all the five institutions are benamidars of one said Shri Dholakia (KGD, for short hereinafter). Thus the Assessing Officer was of the view that KGD was the real owner of the five institutions and said five firms were not genuine. The assessment orders involved and covered in this group of applications are 1986-87, 1987-88 and 1988-89, except in ITA No.31/99. The Assessing Officer on a finding that the said firms are fake refused registration under the IT Act.

Upon appeals, at the instance of the assessee, against the orders of the Assessing Officer, the Commissioner of Income-tax (Appeals), Rajkot, after consideration of the relevant materials and the facts and circumstances, reversed the view of the Assessing Officer and held that KGD could not be characterised as the real owner of the five educational institutions and that the said firms are genuine and, therefore, registration cannot be refused. The appeals filed by the assessee, thus, came to be allowed for the relevant assessment years. Upon further appeals by the revenue before the Income-tax Appellate Tribunals, the orders of the CIT came to be affirmed. Thus, the Tribunal confirmed the views of the first appellate authority. As a result of which, at the instance of the revenue, reference applications under section 256(1) of the IT Act came to be filed before the Tribunal, which, came to be rejected by the common order dated 3.8.98. That is how this group of applications came up before us praying for exercise of power under section 256(2) of the IT Act, calling for reference.

We have heard the learned counsels appearing for the parties and have, dispassionately, examined the facts and circumstances emerging from the record of the case and also the relevant proposition of law. Learned counsel appearing for the revenue has, vehemently, supported the views of the Assessing Officer, inter alia, contending that the orders of both the appellate authorities are perverse. It was, therefore, submitted on behalf of the revenue that the five educational institutions are not genuine firms and KGD is the sole owner of all the five

institutions and the firms are fake, whereas, learned counsel appearing for the assessee has countered the submissions and has supported the concurrent views taken by the two appellate authorities. It was also contended by him that in view of the limited scope of the provisions of section 256(2) of the IT Act, the reference applications are liable to be rejected as no questions of law are involved.

It is a settled proposition of law that the jurisdictional ambit and scope of section 256(2) of the IT Act is circumscribed. The powers thereunder can be exercised only in case of satisfaction that the decision of the Appellate Tribunal is unsupportable in refusing to make reference under section 256(1) of the IT Act. It is, therefore, necessary to satisfy or to, successfully, spell out from the record that the decision of the Tribunal is questionable and not correct and the Appellate Tribunal is required to state the case and refer it on the questions of law. Therefore, in a case where the finding or the questioned decision does not involve any question of law, the exercise of powers under section 256(2) of the IT Act could not be invoked.

Upon assessment of the facts and circumstances, the first appellate authority reversed the views taken by the Assessing Officer that the five educational institutions are fake and that the real owner of the five firms is one KGD and the same is also confirmed by the second appellate authority, namely, Income-tax Appellate Tribunal. Two appellate authorities have, thus, consistently and concurrently, held on facts that the decision of the Assessing Officer is wrong. Undoubtedly, the final fact finding forum is the Tribunal. Unless it is, successfully, pointed out from the record that the finding of fact recorded by the Tribunal is perverse, the exercise of powers under section 256(2) of the IT Act by the High Court for calling for reference would not come into play. In other words, the assessment of facts and appraisal of the evidence before the appellate authorities below is shown to be or is spelt out perverse, the High Court would be at loath to interfere with the findings of facts recorded by the Tribunal more so in a case where two appellate authorities have concurrently recorded findings of facts.

Since, in our opinion, no questions of law are involved, we do not find any justification or merit in this group of 24 applications praying for exercise of power under section 256(2) of the IT Act. However, since we are addressed at length and host of authorities are referred,

we would not like to make an interception enroute without referring following aspects which have remained unimpeachable.

(1) All the partnership firms have common feature in the title which appeared to be educational institutions, like, Gnan Ganga Classes, a firm which was commenced with effect from 1.4.76, Gnan Ganga Science Institute, commenced with effect from 1.4.82, Gnan Ganga Commerce Classes, commenced with effect from 1.4.84 and Gnan Ganga Coaching Classes, commenced from 1.4.84 and Gnan Ganga Arts Institute commenced from 1.4.86.

(2) The revenue authority upon search found that the Bank account in which cash was being deposited was in the joint names of KGD and his brother.

(3) The first appellate authority upon assessment of all facts and circumstances reached to the conclusion that each of the firm has its independent existence by the very nature of its constitution as per the partnership deed and enjoy the fruits of profits as defined by the terms and conditions of the firm.

(4) It was also found by the first appellate authority that none of the partners had ever diverted any part of his income to KGD or his wife either directly or indirectly.

(5) That there is no iota of evidence that KGD is the owner of all the assets or that he is the only one person enjoying the fruits of income of all the firms.

(6) That the statements recorded on the day of raid were interpreted and inferred by the Assessing Officer as if they were mere benamidars of the remaining two partners of the firm.

(7) That the registration of the firms were continued and allowed subsequently as continuing firms till 1997-98.

One of the contentions advanced on behalf of the revenue before us was that the Tribunal has not considered and, as such, ignored material circumstances cited by the Assessing Officer and, therefore, the impugned view of the Tribunal is perverse. Needless to reiterate that the appellate Authority when particularly agrees with the

views taken by the authority below need not meticulously and minutely divulge on all the points at the same length as that of an original authority. It cannot be gainsaid that the appellate Authority while confirming and affirming the views of the authority below is not required to address itself upon all the points with the same length. No doubt, we are satisfied from the facts that the appellate Tribunal has not at all ignored the material circumstances relied on by the Assessing Officer. It is true that the length of the decision of the first appellate Authority covering of all the aspects in greater details are not repeated in the order of the second appellate Authority, which is not required. Therefore, the contention that the order of the Tribunal is perverse in not considering or in ignoring the material circumstances, as such the material circumstances having bearing on the decision have been considered even by the Tribunal. The first appellate Authority, namely, CIT, has also fully addressed itself to all the material circumstances.

What is important is the assessment of the facts and the analysis of the evidence cumulatively reached by the authority. The correctness of the decision can be examined and judged not with the help of one circumstance in isolation from the entire scenario emerging from the record of the case. It is the cumulative effect and the result of the fact situation from the record on merits and it has been considered in greater details by the first appellate Authority and is, in our opinion, rightly also, confirmed by the second appellate Authority.

Since the finding of fact recorded by both the authorities finally culminating into the impugned order of Tribunal does not raise any question of law, the applications under section 256(2) of the IT Act need to be rejected. The finding of facts recorded and challenged in a reference jurisdiction can be interfered with, as a question of law, only upon satisfaction of one or more following aspects, that;

(1) it is perverse;

(2) it is based on irrelevant materials

(3) it is unreasonable

(4) it is based on no evidence

(5) it is based on material not on record.

(6) it suffers from the vice of non-application of mind to the vital and important materials.

(7) the decision or the order is such that no reasonable man can conclude upon the appraisal of the facts on record.

(8) there was misapplication of the provisions of law;

(9) the authority misdirected itself in law in arriving at the conclusion.

(10) there was a complete failure of justice.

In fact, the relevant proposition of law is very well settled. However, following authorities are referred to which reinforce the views taken hereinbefore by us on the question of law.

It has been held by the Hon'ble Supreme Court in Ratanchand Darbarilal v. CIT, AIR 1985 SC, that the court cannot interfere with the findings of fact recorded by the Tribunal and make reappraisal of the materials so as to arrive at a conclusion different from that of the Tribunal. The jurisdictional sweep of the High Court under section 256(2) of the IT Act cannot be equated with the powers of an Appellate Court.

In Sir Shadi Lal Sugar and General Mills Ltd. vs. CIT, AIR 1987 SC 2008, the Hon'ble Supreme Court reversing the view taken by the High Court in a decision reported in 1972 Tax LR 577, held that in a reference under section 66 of the Income-tax Act, 1922, (as it stood at the relevant time) the High Court was in error in so far as it held that the Tribunal had acted incorrectly in preferring one to the other view to the factual appreciation. It is very clear from this decision that upon the reappraisal of the facts, the High Court transgressed the limits of its reference jurisdiction. It is not within the competence of the High Court to say that proper weight had not been given to all the evidence and admissions made by the assessee. There was a finding of fact and unless it could be said that all the relevant facts had not been considered in a proper light, no question of law arises. The conclusion of fact arrived at by the Income-tax Appellate Tribunal after due consideration of evidence is, obviously, not open to interference by the High Court in a reference jurisdiction. The Tribunal performs a judicial function under the Act and it is invested with authority to

determine, finally, all questions of fact. The inference from the facts is one of law is correct in its application to mixed question of fact and law but not pure and simple question of fact. In the case of pure questions of fact an inference from the facts is as much a question of fact as the evidence of facts. Non-appreciation of evidence may give rise to the question of law but not mere misappreciation even if there be any from certain angle. Change of perspective in viewing a thing does not transform a question of fact into a question of law.

It is interesting to note that the Hon'ble Apex Court in CIT v. Karan Chand Thapar and Bros. (P) Ltd,. AIR 1989 SC 1045, has, clearly, propounded that it is not necessary for the Tribunal to state in its judgment specifically, or in express words, that it has taken into account the cumulative effect of the circumstances or has considered the totality of facts. If the judgment of the Tribunal shows that it has, in fact, done so, there is no reason to interfere with the decision of the Tribunal. The Tribunal's decision on facts cannot be questioned unless it is based on irrelevant evidence or is perverse and ordinarily, the finding of fact is final and not open to further reference to the High Court. Therefore, the High Court need not undertake minute scrutiny to find out whether all facts and materials have been taken into account by the Tribunal. The Tribunal is the final fact finding body. The decision of the Tribunal has not to be scrutinised sentence by sentence to find out whether all facts have been set out in detail by the Tribunal or whether some incidental fact which appears on record has not been noticed by the Tribunal in its judgment. If the Court, on a fair reading of the judgment of the Tribunal finds that it has taken into account all relevant material and has not taken into account any irrelevant material in basing its conclusions, the decision of the Tribunal is not liable to be interfered with unless the conclusions arrived at by the Tribunal are totally perverse.

Whether a firm registered is a genuine one or not is, ordinarily, a question of fact and the High Court cannot go behind the facts found by the Tribunal. The finding of fact would be erroneous in law only if it is unsupported by any evidence or it is unreasonable or perverse. When a conclusion has been reached upon appraisal of various facts and circumstances, from the record of the case. The question whether the conclusion is sound or not must be determined not by considering the weight to be attached to each single fact in isolation

but in assessing the cumulative fact put together. This view is also supported by the decision of the Hon'ble Rajasthan High Court in CIT vs. S.M.Bhatiya Associates (Raj),(1997) 226 ITR 675. In this decision, reliance is also placed on the various decisions of Hon'ble Bombay, Calcutta and other High Courts and also on the decision of the Hon'ble Supreme Court in CIT v. Juggilal Kamlapat, (1967) 63 ITR 292. Therefore, the question whether, in fact, a firm had been constituted and came into existence is a pure question of fact on which the decision of the Tribunal is final and no reference to the High Court would lie. The scope of reference jurisdiction under now section 66 of the IT ACt, 1922 and section 256 of IT Act, 1961, is very much limited and in case of dispute about the genuineness of the firm or the trust cannot be reassessed or reappraised by the High Court. The view which we have taken is also very much reinforced by a latest decision of the Hon'ble Supreme Court in Prem Family Private (Specific) Trust v. CIT, (1998) 8 SCC 464.

After having considered the overall facts and circumstances and the consistent and concurrent findings of fact recorded by the two appellate authorities and in the background of the legal proposition enunciated hereinabove, we find no merits in this group of 24 applications. They are, therefore, required to be rejected.

Consequently, they shall stand rejected. Rule discharged without any order of costs.

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(vjn)